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10 Attorneys for Plaintiff and Cross-Defendant
11 UNITED STATES OF AMERICA

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE TERRITORY OF GUAM**

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 MARSHALLS 201, Her Engines, Tackle, Cargo,
18 Appurtenances and Catch of Fish,

19 Defendant.

20 MARSHALL ISLANDS FISHING COMPANY,

21 Cross-Claimant,

22 v.

23 UNITED STATES OF AMERICA,

24 Cross-Defendant.

Civil Case No. CV 06-00030

CONSENT DECREE

25
26 **WHEREAS**, Plaintiff United States of America, on behalf of the National Oceanic and
27 Atmospheric Administration (NOAA) and the Department of Justice (DOJ), and by the authority
28 of the Attorney General, has filed a Civil Forfeiture Complaint (Complaint) initiating this action;

CONSENT DECREE

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FILED
DISTRICT COURT OF GUAM

JUN 02 2009 nba

JEANNE G. QUINATA
Clerk of Court

ORIGINAL

1 **WHEREAS**, in the Complaint, the United States alleges that the MARSHALLS 201
2 (Defendant or Vessel), and thereby its owner, MARSHALL ISLANDS FISHING COMPANY
3 (Owner), has committed a violation of the Magnuson–Stevens Fishery Conservation and
4 Management Act (MSFCMA), specifically: 16 U.S.C. § 1857(2)(B), fishing in the United States
5 Exclusive Economic Zone without a permit on September 9, 2006;

6 **WHEREAS**, Owner acknowledges that the captain of the Vessel was fishing inside the
7 Exclusive Economic Zone of the United States without a permit on that date;

8 **WHEREAS**, the parties have agreed that settlement of this action is in the public interest
9 and that entry of this Consent Decree without further litigation is the most appropriate way to
10 resolve this action and avoid protracted litigation costs and expenses;

11 **WHEREAS**, an authorized representative of the MARSHALL ISLANDS FISHING
12 COMPANY certifies that it is the owner of Defendant vessel, MARSHALLS 201;

13 **WHEREAS**, Defendant and Owner agree to settle the case by payment of a monetary fine
14 that would settle all claims against the Vessel and Owner; by cooperatively providing Vessel
15 Monitoring System (VMS) information to the United States, through the Marshall Island Marine
16 Resources Authority (MIMRA), an agency of the Government of the Republic of the Marshall
17 Islands; and by participating in NOAA's Global Drifter Program;

18 **WHEREAS**, the United States, upon payment of the monetary fine amount from the
19 release bond filed by Defendant and Owner and the filing of this Consent Decree, shall release
20 Defendant and Owner from all further liability to the United States for any alleged violation of the
21 MSFCMA;

22 **WHEREAS**, Owner agrees to release the United States from any liability on the Cross-
23 Claim filed in response to the Complaint;

24 **WHEREAS**, the parties stipulate and agree to the terms and conditions contained in this
25 Consent Decree; and

26 **THEREFORE**, based on the pleadings, the above premises, and the stipulation of the
27 parties, before taking testimony or adjudicating any issue of fact or law;

28 **IT IS ORDERED, ADJUDGED AND DECREED** as follows:

1 I. JURISDICTION AND VENUE

2 1. This Court has jurisdiction over the subject matter of this action and over
3 Defendant pursuant to 16 U.S.C. §§ 1860(b) and 1861(d), 28 U.S.C. §§ 1333, 1345 and 1355.
4 Venue is proper in this Court. Defendant and Owner hereby submit to the continuing jurisdiction
5 of the United States District Court for a period of five (5) years for the limited purpose of
6 enforcing the provisions of this Consent Decree.

7 II. PARTIES BOUND

8 2. This Consent Decree shall apply to and be binding upon Defendant and Owner, its
9 agents (excluding husbanding agents), servants, vessel captains, employees, successors, assigns,
10 and upon all persons acting for, through, in active concert or participation with, or on their behalf,
11 and upon the United States on behalf of the NOAA and DOJ.

12 III. TERMS OF SETTLEMENT

13 3. Settlement Amount. Defendant and Owner consent to the condemnation and
14 forfeiture of the amount of Five Hundred Thousand Dollars (\$500,000.00) for the use and benefit
15 of the United States of America pursuant to 16 U.S.C. § 1860(b):

16 (a) Owner hereby consents to the condemnation and forfeiture of Five Hundred
17 Thousand Dollars (\$500,000.00), and does hereby abandon same to the United States
18 Government.

19 (b) Upon the filing of this Consent Decree and entry of an order dismissing this
20 case with prejudice, the Court shall direct the Clerk to transfer the Settlement Amount of Five
21 Hundred Thousand Dollars (\$500,000) to an account designated by the United States and to return
22 the remaining amount in the release bond filed by Defendant and Owner, including the remaining
23 principal amount and accrued interest, to the Owner in accordance with the Owner's instructions.

24 4. Vessel Monitoring System. The United States and Owner acknowledge that the
25 Vessel currently is required to use and maintain an approved VMS device under treaty fishing
26 arrangements in the Western and Central Pacific Ocean. The Vessel is obligated to transmit VMS
27 location and tracking information to the Pacific Island Forum Fisheries Agency (FFA) in Honiara,
28 Solomon Islands on a regular basis. Such VMS tracking information is subject to the control of

the individual treaty nations or, in this case, the MIMRA. The United States and Owner understand that MIMRA has agreed to provide NOAA and United States Coast Guard with “near real-time access” to the Vessel’s VMS tracking information in all areas of its fishing operations for a period not to exceed three (3) years from the date of the first VMS data transmission under this Consent Decree. Such access will be provided on the basis of terms and conditions to be worked out between NOAA and the MIMRA within one hundred eighty (180) days. The parties agree that the VMS access arrangements worked out between NOAA and MIMRA shall be considered “near real-time access” for purposes of this paragraph.

5. Global Drifter Program. Defendant shall, at the soonest time possible, but not to exceed one hundred and eighty (180) days from the signing of this Consent Decree, participate in NOAA's Global Drifter Program by releasing an agreed number of buoys on any fishing trips where the vessel transits the area of 150°E to 180°E, and 20°N to 20°S. The Vessel, under this Program, is not required to travel to specific locations but should participate in accordance with fishing operations determined by Owner. Participation in the Program shall require deployment of two satellite tracked surface drifting buoys per fishing trip to this area for a period not to exceed five (5) years. Buoys are to be provided by NOAA, which shall bear the costs of shipping and handling of the buoys to Majuro, Republic of the Marshall Islands.

6. Updated Contact Information. Integral to the above provisions, Defendant and Owner shall maintain current information with NOAA and its agents, such that the Vessel and Owner can be contacted at all times for consultation and information regarding the access to the VMS information and other settlement terms during the entire five year period of this Consent Decree.

IV. COMPLIANCE

7. The Defendant and Owner shall comply with all the provisions of the MSFCMA.

8. The Defendant and its Owner understand that failure to comply with this Consent Decree can result in sanctions imposed by the United States District Court, District of the Territory of Guam.

9. Any failure by the United States Government or the Government of the Marshall

1 Islands, or any of its agencies, shall not be considered a failure by Defendant and Owner to
2 comply with the terms of this Consent Decree.

3 V. PENALTIES FOR FAILURE TO COMPLY

4 10. The Defendant and Owner shall pay such reasonable penalties as are determined by
5 the United States District Court, District of the Territory of Guam, for any failure or lack of due
6 diligence in participating in the FFA VMS program during a period of three (3) years from the
7 signing of this Consent Decree, after notice and an opportunity for a hearing. Both parties
8 acknowledge that the Vessel is currently participating in the FFA VMS program and that MIMRA
9 has agreed, in principle, to provide the Vessel's VMS data to NOAA to facilitate this settlement.
10 No penalty shall be assessed against Defendant and/or Owner because of any failure of the FFA or
11 MIMRA with respect to the management, storage, handling and/or transmission of the Vessel's
12 VMS data to NOAA.

13 11. The purpose of the transmission of the VMS data to NOAA or the United States
14 Coast Guard and their designees is for government purposes only, and such data shall be treated as
15 business confidential information and treated accordingly.

16 VI. NOTIFICATION

17 12. Except as otherwise specifically stated, all notices and submissions from the
18 Defendant and Owner to NOAA required by this Consent Decree shall be sent via facsimile and
19 addressed concurrently to:

20 (a) National Oceanic and Atmospheric Administration
21 c/o Office of the General Counsel Enforcement and Litigation
22 Pacific Islands Region
23 1601 Kapiolani Blvd., Suite 1110
24 Honolulu, Hawaii 96814
25 Tel: (808) 944-2167
26 Fax: (808) 973-2935

27 (b) National Oceanic and Atmospheric Administration
28 National Marine Fisheries Service
Office of Law Enforcement, Pacific Islands Region
1601 Kapiolani Blvd., Suite 950
Honolulu, Hawaii 96814
Tel: (808) 203-2500
Fax: (808) 203-2599

1 13. All notices from NOAA to the Defendant or Owner shall be addressed to:

2 Marshall Islands Fishing Company
3 P.O. Box 1138
4 Majuro, MH 96960
Tel: (692) 625-7410
Fax: (692) 625-7411

5 14. Any change in such contact information by either party shall be immediately
6 communicated to the other party.

7 VII. MISCELLANEOUS

8 15. Entry of this Consent Decree and compliance with the requirements herein shall be
9 in full settlement and satisfaction of the civil forfeiture and civil administrative penalty claims of
10 the United States against Defendant and Owner as alleged in the Complaint and for any violation
11 (known or unknown) of the MSFCMA against Defendant and Owner that could have been filed by
12 the United States prior to October 11, 2006.

13 16. This Consent Decree in no way affects the Defendant's or Owner's responsibility to
14 comply with all federal, state, or local laws and regulations.

15 17. Except as specifically provided herein, the United States does not waive any
16 claims, rights or remedies available to it for any future violations by Defendant or Owner of
17 federal or state laws or regulations, including, but not limited to, any and all future violations of
18 the MSFCMA. This Consent Decree herein shall be, and the same is, wholly without prejudice to
19 the United States' claims, rights, or remedies available to it against the Defendant or Owner for
20 any future violations by the Defendant or Owner of federal or state laws or regulations, including,
21 but not limited to, the MSFCMA, including rights under 16 U.S.C. § 1858 to take into account
22 prior offenses, including the acts forming the basis of this action and Consent Decree.

23 18. Each party shall bear its own costs and attorney's fees in this action.

24 19. Any modification of this Consent Decree must be in writing and approved by the
25 parties and the Court.

26 20. The United States hereby releases and forever discharges Defendant and Owner, its
27 agents, servants and assigns, of all claims and demands for damages including any and all
28 administrative, civil, criminal, forfeiture or any other fines, penalties, forfeiture, imprisonment,

1 restitution, costs or attorneys fees arising out of the facts as alleged in the Complaint. The parties
2 understand that the Consent Decree does not include any resolution of the criminal charges
3 pending against the captain of the Vessel in Criminal Case No. 07-00034, Federal District Court
4 for the Territory of Guam.

5 21. Defendant and Owner each hereby release and forever discharge the United States,
6 its agents, servants and assigns, of any claims for damages arising out of the facts alleged in the
7 Complaint or the Cross Claim filed in this case, including any and all damages, costs and attorneys
8 fees.

9 22. The Court shall retain jurisdiction over this matter and all disputes arising
10 hereunder until five (5) years after the commencement of the requirements described in this
11 Consent Decree. Thereafter, this Consent Decree shall expire. The undersigned agree to the
12 foregoing Consent Decree; that the Consent Decree may be entered; and that the Complaint and
13 Cross-Claim in this case shall be dismissed with prejudice by the Court.

14
15 **IT IS SO STIPULATED** this 2ND day of June, 2009.

16
17 Plaintiff and Cross-Defendant
18 UNITED STATES OF AMERICA

19 LEONARDO M. RAPADAS
20 United States Attorney
21 Districts of Guam and CNMI

22 By: 

23 MIKEL W. SCHWAB
24 Assistant U.S. Attorney

25 Defendant Vessel
26 MARSHALLS 201

27 By: 

28 MARSHALL ISLANDS FISHING COMPANY
Authorized Representative
Owner of the MARSHALLS 201